



NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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FCC WAIVES PORTIONS OF ITS “DESIGNATED ENTITY” ELIGIBILITY RULES FOR THE UPPER 700 MHz D BLOCK LICENSE

Washington, D.C. – In an Order released today, the Federal Communications Commission (FCC) waived one of its designated entity eligibility rules for the Upper 700 MHz D Block license. The single, nationwide Upper D Block license will be part of the 700 MHz Public Safety/Private Partnership with the 700 MHz Public Safety Broadband Licensee. This Partnership is designed to enable the construction of a nationwide, interoperable broadband communications network for public safety.

With today’s action, the FCC decided that it will not apply its “impermissible material relationship” rule when determining designated entity eligibility for the Upper D Block license. Under this rule, except for cases where specifically grandfathered, an applicant or a licensee is considered to have an “impermissible material relationship” if it has entered into arrangements with one or more entities for the lease or resale (including wholesaling arrangements) of more than 50 percent of the spectrum capacity, and is therefore ineligible for designated entity benefits.

Because the FCC is waiving this rule for the Upper D Block license, entities that have entered into an otherwise “impermissible material relationship” when applying for the Upper D Block license can still qualify as designated entities as long as they meet all of the FCC’s other designated entity eligibility requirements. In addition, if the Upper D Block is licensed to a designated entity, the licensee will not be prohibited from entering into agreements to, on a cumulative basis, lease or resell (including wholesale agreements) more than 50 percent of its spectrum capacity to other entities. The Upper D Block applicants and licensee will remain subject to the FCC’s other designated entity provisions, including the “attributable material relationship” and unjust enrichment rules.

The FCC found that the unique circumstances and obligations of the Upper D Block license, together with the application of the FCC’s other designated entity eligibility rules, make the application of the “impermissible material relationship” rule unnecessary and inequitable in this instance. The Upper D Block licensee is required to construct and operate a nationwide, interoperable broadband network across both the Upper D Block and the 700 MHz public safety broadband spectrum under stringent build out requirements. In addition, the winning bidder for the Upper D Block license is obligated to negotiate a Network Sharing Agreement (NSA) with the Public Safety Broadband Licensee. The NSA must be approved by the FCC before the

Upper D Block license is granted to the winning bidder, and the FCC will retain an ongoing role in overseeing the negotiation and implementation of the NSA. The FCC's significant oversight role, along with the requirements and obligations of the license, will ensure that today's waiver will not undermine the underlying purposes of the "impermissible material relationship" rule or risk any abuses that the rules is designed to address.

Action by the Commission on November 15, 2007, by Order (FCC 07-197). Chairman Martin and Commissioners Copps, Adelstein, Tate, and McDowell.

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